

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

**Spectrum Policy Task Force,  
June 6, 2002, Public Notice on Spectrum  
Policies**

ET Docket No. 02-135

**To: The Spectrum Policy Task Force**

**COMMENTS**

The Federal Communications Commission ("FCC") recently established the Spectrum Policy Task Force, which has requested comment on a wide array of spectrum policy issues in a June 6, 2002, Public Notice (DA 02-1311). In particular, the Task Force seeks comment in the following general categories: market-oriented allocation and assignment policies, interference protection, spectral efficiency, public safety communications, and international issues. On behalf of the rural telephone companies listed in Attachment A hereto, the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast submits these comments.

The Task Force should recommend to the Commission that spectrum policies and rules be different in rural areas, where congestion is relatively low, than in highly congested urban areas. Specifically, the Commission should ensure that rural telephone companies and small businesses have access to spectrum through small licensing areas based on the Metropolitan Statistical Area (MSA)-Rural Service Area (RSA) assignment model. In this regard, the

Commission has already taken a positive first step by assigning MSA/RSA licenses to the 12 MHz C-block in the Lower 700 MHz Band (710-716 MHz/740-746 MHz).<sup>1</sup>

Additionally, in a statement on the Task Force's Public Notice, Commissioners Kevin J. Martin and Michael J. Copps emphasized the importance of rural areas.<sup>2</sup> The Commissioners wrote: "...[W]e are concerned and surprised that our obligation to use our rules to promote service to rural Americans is barely mentioned in the Public Notice. This responsibility is too important to be ignored." Further, Commissioner Copps recently announced that the Commission plans to release a Notice of Inquiry (NOI) on whether the Commission's auction rules are promoting service to rural areas.<sup>3</sup>

Commissioner Copps specifically pointed to Section 309(j)(3) of the Communications Act, which directs the Commission to design competitive bidding systems so as to promote objectives, including "promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by minority groups and women." 47 U.S.C. § 309(j)(3)(B).

When Congress gave the Commission the authority to conduct spectrum auctions in the Omnibus Budget Reconciliation Act of 1993, many legislators were concerned that competitive

---

<sup>1</sup> Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, released January 18, 2002.

<sup>2</sup> Statement of Commissioners Kevin J. Martin and Michael J. Copps on the Spectrum Policy Task Force's Public Notice on Spectrum Policies (Public Notice, ET Docket No. 02-135), June 6, 2002.

<sup>3</sup> Statement of Commissioner Michael J. Copps, *In the Matter of Amendments to Parts 1, 2, 27, and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz,*

bidding would result in a much greater concentration of wireless licenses and facilities in the hands of large and “deep-pocketed” entities, and in the more populous and financially lucrative urban areas. *H.R. Report 103-111*, 103d Congress, 1<sup>st</sup> Session, at pp. 254-55. As a result, Congress granted competitive bidding authority to the Commission only on the condition that the auction methodologies to be implemented would include safeguards to protect the public interest in the use of spectrum and to advance the objectives of Section 309(j).

Congress expressly required the Commission to adopt and implement specific spectrum auction regulations that would:

- “consistent with the public interest, convenience and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid development of new technologies and services,” 47 U.S.C. § 309(j)(4)(C); and
- “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and for such purposes,

---

*1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands (Report and Order)*, WT Docket No. 02-08, statement released May 16, 2002.

consider the use of tax certificates, bidding preferences, and other procedures.” 47

U.S.C. § 309(j)(4)(D).

These statutory provisions require the Commission to monitor and adjust its spectrum auction procedures to ensure that wireless facilities are being constructed and operated in rural areas, and that rural telephone companies and other small businesses are being afforded fair opportunities to acquire and develop an equitable share of the auctioned spectrum.

Although rural telephone companies have a proven record of bringing high-quality, state of the art telecommunications services to their rural customers, quality wireless services (especially digital wireless services) have not become widely available in major portions of rural America. With the exception of roaming corridors along rural stretches of interstate and other major highways, wireless has been primarily an urban and suburban service. To a large extent, this is due to the large geographical licensing areas (e.g., EAGs, Metropolitan Trading Areas (MTAs), etc.) that the Commission assigned in previous auctions. These large licensing areas have been dominated by one or more urban areas, and generally have had population, demographic, and economic characteristics beyond the scale that by rural telephone companies could reasonably expect to successfully bid on and serve.

These licensing areas have been too expensive for rural telephone companies and consortia to acquire, and too costly and unwieldy for them to construct and operate thereafter. As a result, most wireless licenses have been acquired at auction or thereafter by large national and regional wireless carriers with the “deep pockets” necessary to bid and pay high prices. These large carriers then have focused their construction and service efforts in the most populous and lucrative urban and suburban portions of their licensing areas. In fact, these carriers normally

have been able to satisfy their full build-out requirements without reaching the rural portions of the licensing areas.

The Commission recognized this problem when it adopted MSA/RSA licensing areas for the Lower 700 MHz Band C-block auction. Most of the rural telephone companies participating in these comments have attempted to obtain spectrum in the past, and/or are participating in the upcoming Lower 700 MHz auction this summer. **These carriers urge the Task Force to follow the Commission's lead and recommend that the Commission assign such small licensing areas to one or more spectrum blocks in all future auctions.**

Similarly, the Commission's partitioning and disaggregation rules also have proved to be largely unsuccessful in assisting rural telephone companies and other small businesses to enter the wireless business. The problem is that the large national and regional carriers that control the licenses for most of the spectrum are not willing or able to devote the time and resources necessary to negotiate and implement arrangements on the scale desired by rural telephone companies. Put simply, most national and regional carriers are not willing to negotiate partitioning and disaggregation arrangements for areas that have less than 1 million "pops" (potential market population). Rural telephone companies, on the other hand, typically serve areas with only a few thousand pops.

In this regard, a National Telecommunications Cooperative Association (NTCA) survey of its members last year noted that 41% of its survey respondents had contacted a wireless licensee about partitioning, and 12% had been approached by another company. Of these, 33%

reported that they were successful, but 52% were not successful in establishing a partitioning arrangement.<sup>4</sup>

Commissioner Copps recognized this problem in announcing the forthcoming NOI on whether the Commission's auction rules were promoting service to rural areas. "While partitioning and disaggregation theoretically could accomplish this goal, there is no proof that they do so," the Commissioner said. "Therefore, we should not rely on these tools to meet our statutory obligation until we gather far more information."

According to the Commissioner, the NOI, among other things, will explore whether partitioning and disaggregation are useful tools, whether there are ways to improve these tools, and whether there are additional and better tools that the Commission should adopt to promote wireless service to rural areas. Until the NOI provides new information, the Commissioner said, "I will continue to push for RSAs to promote rural service, and will not rely on partitioning and disaggregation for this purpose." The Commission should revise the partitioning and disaggregation rules to better facilitate such transactions, by providing large licensees with greater incentives to deal with rural carriers. Such incentives can include larger reduction of a build out requirement if a licensee partitions to a rural carrier; and/or a modified version of the cellular unserved area rule. These mechanisms would be an important improvement in the current situation; but they will not be effective as the only tool for rural entities to obtain spectrum, and smaller license areas in future auctions are still necessary.

Further, the Commission has a pending proceeding on secondary markets for spectrum (WT Docket No. 00-230), in which spectrum leasing is under consideration. Spectrum leasing

---

<sup>4</sup> NTCA Wireless Survey Report, September 2001, [www.ntca.org](http://www.ntca.org).

could provide rural telephone companies with a valuable tool for obtaining access to spectrum, but like partitioning and disaggregation, this should not be the only tool. NTCA's wireless survey revealed that 48% of the respondents were concerned about the cost of leased spectrum, 22% were concerned about the length of leases and renewal issues, and 13% believed their companies were just too small to seriously consider leasing spectrum.<sup>5</sup>

**The rural carriers urge the Task Force to recommend that the Commission promptly move forward with the proposed changes to its rules on partitioning, disaggregation, and spectrum leasing as advocated by the rural industry in numerous proceedings; but that the Commission should focus on the MSA/RSA licensing model as an equally important (if not more important) tool to promote wireless service in rural areas.**

Additionally, the Task Force should review the Commission's "entrepreneur" and "designated entity" programs that were designed to assist bona fide small businesses in entering the wireless business. Due in part to the assignment of large licensing areas, past entrepreneur and designated entity auctions have been dominated by start-ups designed on paper to meet the letter of the Commission's eligibility requirements and attribution rules. But these entities were able to access resources far in excess of those available to bona fide small businesses.

In the most recent Broadband PCS auction (Auction No. 35), for example, entities claiming less than \$125 million in attributable annual gross revenues and less than \$500 million in attributable total assets bid billions of dollars to win the lion's share of the restricted entrepreneur licenses.

---

<sup>5</sup> *Id.*

**The rural carriers urge the Task Force to recommend that the Commission revisit its eligibility criteria for entrepreneurs and designated entities, and ensure that these rules apply to the bona fide small entities they were intended to assist; and to the extent that such revisions to its rules prove difficult, this only underscores the need for smaller license areas as a necessary measure.**

Adopting an RSA-size licensing model will help the Task Force achieve its goal of spectral efficiency because it will ensure that wireless facilities actually will be constructed and operated in rural areas. RSA licenses will also ensure that these licenses will be acquired by the entities that place the highest value upon serving rural areas. Rural telephone companies have a long and proven record of high-quality service that has been responsive to the needs of rural customers. If license sizes are small enough for rural telephone companies to acquire them with their limited resources, wireless services will be readily deployed in rural America, consistent with the rural mandates of the Communications Act. At the same time, the Commission will be helping a group of bona fide and verifiable small businesses to participate in telecommunications.



Finally, the Task Force should appoint a member of Commissioner Copps' staff to participate in Task Force meetings and votes. Since Commissioner Copps is leading the effort to develop effective rural telecommunications policy at the Commission level, with an eye toward the issuance of a rural NOI later this year, it would make sense to have his staff participate in the Task Force's efforts from the beginning.

Respectfully Submitted,

/s/ John A. Prendergast  
John A. Prendergast  
Blooston, Mordkofsky, Dickens, Duffy & Prendergast  
2120 L Street, NW, Suite 300  
Washington, DC 20037  
(202) 659-0830

Dated: July 8, 2002

## **Attachment A**

Chibardun Telephone Cooperative, Inc. (and its subsidiary CTC Telecom, Inc.)

Dickey Rural Telephone Cooperative (and its subsidiary Dickey Rural Services, Inc.)

Golden West Telecommunications Cooperative, Inc. (and its subsidiary GW Wireless, Inc.)

Interstate Telecommunications Cooperative, Inc. (and its subsidiaries Stateline Telecommunications, Inc. and Interstate Satellite Services, Inc.)

James Valley Cooperative Telephone Company (and its subsidiary Northern Valley Wireless, Inc.)

Kennebec Telephone Company, Inc.

McCook Cooperative Telephone Company (and its subsidiaries Hanson County Telephone Company and Hanson Communications, Inc.)

Midstate Communications, Inc. (and its subsidiary Midstate Wireless, Inc.)

Penasco Valley Telephone Cooperative, Inc. (and its subsidiary PVT Networks, Inc.)

Santel Communications Cooperative

Souris River Telecommunications Cooperative (and its subsidiary North Dakota Network Co.)

South Slope Cooperative Telephone Company, Inc.

Splitrock Telecom Cooperative, Inc. (and its affiliate Baltic Telecom Cooperative)

Sully Buttes Telephone Cooperative, Inc. (and its subsidiary Venture Wireless, Inc.)

Valley Telecommunications Cooperative Association, Inc. (and its subsidiary Valley Cable & Satellite Communications, Inc.)

West River Cooperative Telephone Company